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In the Supreme Court of the United States
October Term, 1984

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Appellants

- v -

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,

Appellees

ON APPEAL FROM THE MICHIGAN COURT OF APPEALS

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether The Appellant Taxpayers Were Denied Their Rights To Due Process Of Law, Pursuant To The Fourteenth Amendment, By The Workings Of The Michigan General Property Tax Acts When These Individual Property Owners Were Afforded No Notice, Opportunity To Be Heard, Or Impartial Hearing In Regard To The State Tax Commission's Inter-County Equalization Determination?

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OPINIONS BELOW

The opinion of the Michigan Court of Appeals, on remand, (App. B, infra, 1-B) is reported at 126 Mich. App. 806 (1983). The original decision of the Michigan Court of Appeals (App. E, infra, 1-E) is reported at 92 Mich. App. 585 (1979). The Order of the Michigan Supreme Court (App. C, infra, 1-C) vacating the judgment of the Court of Appeals in 92 Mich. App. 585 (1979) is reported at 414 Mich. 902 (1982). The Order of the Michigan Supreme Court (App. A, infra, 1-A) Denying Application For Leave to Appeal of 126 Mich. App. 806 (1983) is reported at 419 Mich. 874 (1984). The Opinion of the Circuit Court (App. F, infra, 1-F) has not been reported.

JURISDICTION

The judgment to be reviewed is the July 6, 1983 Opinion and Order of the Michigan Court of Appeals. 126 Mich. App. 806 (1983) (App. B, infra, 1-B). Following the issuance of this Opinion, the Appellants filed a timely Application For Leave to Appeal with the Michigan Supreme Court. This Application was denied on May 7, 1984. 419 Mich. 874 (1984) (App. A, infra, 1-A). Therefore, the decision of the Court of Appeals has become the final adjudication in this matter. Michigan General Court Rule 853.2(2). A notice of appeal (App. K, infra, 1-K) was filed on August 6, 1984, with the Michigan Court of Appeals. A copy was also filed with the Macomb County Circuit Court. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. The Michigan Board of Equalization Act, MCLA 209.1 - 209.8; MSA 7.601 - 7.608 is set forth in Appendix L, infra, 1-L.

3. The Michigan Executive Organization Act, Section 86, MCLA 16.186; MSA

3.29(86) is set forth in Appendix M, *infra*, 1-M.

STATEMENT OF THE CASE

The Appellants are residents of the County of Macomb, State of Michigan, owning property either in the Township of Shelby or the City of Sterling Heights which was subject to taxation pursuant to the general property tax laws of the State of Michigan during tax year 1978. The Appellees are units of government or administrative agencies charged with the administration of the general property tax laws of the State of Michigan.

On December 31, 1974, the local assessors of the various municipalities within the County of Macomb determined the assessed valuation of each parcel of real property situated within their jurisdiction. During March, 1975, Macomb County taxpayers who took issue with the assessment of their property were entitled

to appear and protest their assessment to the local board of review. MCLA 211.29; MSA 7.29. The local boards of review were charged by statute with the completion of the review of assessments by the first Monday in April, 1975. MCLA 211.30(a); MSA 7.30(1). Each municipality's property tax roll for that year was then certified as approved by the local boards of review. MCLA 211.30; MSA 7.30.

In April, 1975, the Macomb County Board of Commissioners met to examine the assessment rolls of the county's various municipalities in order to ascertain whether the real and personal property had been equally and uniformly assessed by the various boards of review. MCLA 211.34; MSA 7.52. Pursuant to this process of "intra-county equalization", the Macomb County Board of Commissioners

was obliged to produce a sum which represented the true cash value of the taxable property in a municipality by adding to or deducting from the valuations of taxable property in each township or city. The Macomb County Board of Commissioners did not materially alter the assessment as locally determined in its 1975 intra-county equalization determinations.

On the second Monday in May, 1975, the State Board of Equalization commenced the process of "inter-county equalization" MCLA 209.2; MSA 7.602. The records and proceedings of the Macomb County Board of Commissioners were thereby transmitted to the Michigan State Tax Commission, sitting as the State Board of Equalization, in order to equalize the assessed valuations of the eighty-three (83) counties of the state. By adding to or deducting from

the aggregate assessed valuation of the taxable property in each county of the state, the State Tax Commission is charged by statute with the responsibility of equally ascertaining the relative valuation between the various counties. MCLA 209.4; MSA 7.604.

The State Tax Commission met in Lansing, Michigan on June 3, 1975 for the purpose of equalizing the property values of Michigan's eighty-three (83) counties, and pursuant to the process of inter-county equalization, changed the equalized valuation of Macomb County by approximately 14.6 percent for the 1975 tax year. Macomb County filed objections to the 14.6 percent change in inter-county equalization by filing an appeal with the Michigan tax tribunal on June 13, 1975.

Subsequently, Macomb County directed the local units of government to issue

their 1975 tax bills as a "tentative levy". MCLA 211.39a; MSA 7.80(1). This tentative levy was based upon the intra-county equalized value.

Prior to the resolution of Macomb County's appeal before the Michigan tax tribunal, the Michigan Supreme Court decided Emmet County v. State Tax Commission, 397 Mich. 550 (1976). The Supreme Court there held that the tax tribunal lacks jurisdiction in all matters involving inter-county equalization. The Emmet County case was decided during August of 1976. As a result of the Emmet County case, Macomb County filed application for leave to appeal with the Michigan Court of Appeals, (Docket No. 30760) asserting that the State Tax Commission's inter-county equalization for 1975 unlawfully increased the county's assessed

valuation by 14.6 percent. Macomb County's application for leave to appeal to the Court of Appeals was denied February 4, 1977. Immediately thereafter the County filed an application for leave to appeal with the Michigan Supreme Court (Docket No. 19-325). The Michigan Supreme Court denied the County's application for leave to appeal on July 27, 1977.

After Macomb County's unsuccessful challenge to the State Tax Commission's inter-county equalization determination, the county and the local units of government declined to collect the increased tax liability resulting from an alteration in equalized value.

On March 26, 1976, the Chippewa Valley School District commenced suit against the State of Michigan and the County of Macomb in the Macomb County

Circuit Court. (File NO. 76-1987-AA). This suit was filed subsequent to the State Tax Commission's 1975 inter-county equalization determination, but prior to the exhaustion of Macomb County's efforts at appeal. As against the County of Macomb, the Chippewa Valley School District sought a judicial declaration to the effect that the County Board of Commissioners improperly failed to direct the local assessing officers to levy and assess school millages based upon the State Tax Commission's inter-county equalized valuation for the 1975 tax year. Instead, the County Board of Commissioners directed local assessing officers to levy and assess school millages based upon the County intra-county equalized valuation for 1975.

The Chippewa Valley case was heard by Judge Norman A. Baguley of the Lapeer

County Circuit Court. Judge Baguley, by order entered September 29, 1977, granted the Motion for Summary Judgment on behalf of Chippewa Valley Schools as against the County of Macomb. The Summary Judgment declared that the County of Macomb's actions in failing to spread the levy of 1975 taxes upon the state equalized valuation as opposed to the county equalized valuation was in violation of the general property tax laws of the State of Michigan.

On November 3, 1977, Judge Baguley ordered that the taxes based on the 1975 state equalized valuation were to be levied using millages levied by each school district of Macomb County "against the 1975 assessment rolls as reconstructed to reflect current billing requirements." Judge Baguley further ordered that the calculation, spread, levy and issue of

tax statements for the 1975 tax year should be deferred until July 1, 1978, in order to allow local assessing officers to reconstruct the 1975 tax roll. The local taxing districts issued bills that should have been sent in 1975 between December of 1977 and July 1, 1978, in accordance with Judge Baguley's order.

Appellants were property owners of Macomb County. Two Appellants were property owners prior to the 1975 tax year. The other four Appellants became property owners in Macomb County subsequent to the 1975 tax year. Persons buying property subsequent to the 1975 tax year received a statutory certification from the Macomb County Treasurer as to the non-existence of unpaid tax liabilities for the previous five (5) years at the time their deeds or conveyance of title were presented to the

County Register of Deeds for recording. MCLA 211.135; MSA 7.194.

On February 17, 1978, the Appellants filed their Complaint in Macomb County Circuit Court seeking a declaration as to the validity of the tax bills ordered by Judge Baguley, enjoining their collection, and requesting a refund of all property taxes paid on those bills on their own behalf as well as on the behalf of all other Macomb County property taxpayers. Appellants' class action Complaint alleged deprivation of property without due process of law in violation of Mich. Const. 1963, Article I, Section 17 and U.S. Const. XIV Amendment, Section 1 and alleged a violation of Mich. Const. 1963, Article IX, Section 3 requiring uniformity in taxation.

Macomb County filed its Answer to Appellants' Complaint on February 28,

1978. In lieu of filing an Answer, the State Tax Commission filed a Motion for Accelerated Judgment on March 8, 1978. On March 9, 1978, the County of Macomb filed a Motion for Summary Judgment. Shelby Township filed its Answer to Appellants' Complaint on March 14, 1978. Having failed to answer timely, a default was entered as against the City of Sterling Heights on March 23, 1978. This default was subsequently set aside by stipulation of the parties on June 19, 1978.

The Appellees' Motion for Summary Judgment and Accelerated Judgment were briefed by the parties and argued before The Honorable Arthur E. Moore on April 10, 17 and 18, 1978.

On April 21, 1978, The Honorable Arthur E. Moore filed his Opinion on the Appellees' Motion For Accelerated Judgment and Summary Judgment indicating that

an Order could be entered granting both Motions. (App. F, infra, 1-F) Judge Moore determined that there was no state or federal constitutional requirement of notice of equalization and a judicial-type hearing. Additionally, the Judge found that Appellants' right to due process was afforded by a hearing before the Michigan Tax Tribunal. The Judge further ruled that his Court lacked jurisdiction over this cause of action. The Order Granting Macomb County's Motion for Summary Judgment was signed by Judge Moore on June 19, 1978, and filed with the Court on June 28, 1978. (App. G, infra, 1-G)

The Appellants filed a Claim of Appeal to the Michigan Court of Appeals on July 7, 1978. On July 18, 1978, the parties to this proceeding were informed by letter from the Chief Clerk of the Court of Appeals that a Claim of Appeal would not be considered timely until a

final judgment as to all the parties in this proceeding had been adjudicated by a formal order of the trial court. An order granting Accelerated Judgment as to Appellee City of Sterling Heights was entered by the Court on July 12, 1978. (App. H, infra, 1-H) An Order Granting Accelerated Judgment as to Appellee State Tax Commission was entered by the Court on August 16, 1978. (App. I, infra, 1-I) An Order granting Accelerated Judgment as to the final Appellee Township of Shelby was entered by the Court on October 2, 1978. (App. J, infra, 1-J) A Claim of Appeal was filed by the Appellants on October 4, 1978.

The parties filed briefs relative to their respective positions on appeal, and Oral Argument was offered before the Court of Appeals for the 2nd District on June 11, 1979. On September 20, 1979, the Court of Appeals issued its per curium opinion upholding the Trial Court's

decision that only the State Tax Tribunal had jurisdiction to hear this proceeding. Henshaw v. State Tax Commission, 92 Mich. App. 585 (1979). (App. E, infra, 1-E) That Court did not address the constitutional claims raised by Appellants.

On October 9, 1979 the Appellants filed an Application For Leave To Appeal in this matter with the Michigan Supreme Court. On February 25, 1980, the Supreme Court ordered that the Application "be held in abeyance pending decision in Romulus v. Wayne County Drain Commissioners and Wikman v City of Novi." (App. D, infra, 1-D) By Order dated August 31, 1982 the Court vacated the judgment of the Court of Appeals and remanded the case to the Court of Appeals for reconsideration in light of Romulus v. Wayne County Drain Commissioner and Wikman v. City of Novi, 413 Mich. 617. (App. C,

infra, 1-C) Further, the parties were granted the opportunity to submit new briefs and arguments. The Michigan Supreme Court did not retain jurisdiction. Henshaw v. State Tax Commission, 414 Mich. 902 (1982). The parties submitted new briefs and oral argument was held in Detroit, Michigan on April 14, 1983.

On July 6, 1983 the Court of Appeals rendered its opinion which held that contrary to its prior opinion, the circuit court possessed jurisdiction over the claims of Appellants because their claims involved purely constitutional issues outside the Tax Tribunal's sphere of expertise. The Court then determined that individual property owners were not denied due process of law by the State's inter-county equalization procedures because they were represented at every stage in those proceedings by County representatives. The Court also deter-

mined that the final levy of a 1975 property tax in 1978 did not violate the Michigan constitutional requirement of uniformity in taxation. Henshaw v. State Tax Commission, 126 Mich. App. 806 (1983). (App. B, infra, 1-B)

On July 25, 1983 the Appellants filed an Application For Leave To Appeal with the Michigan Supreme Court. This Application was denied on May 7, 1984. Henshaw v. State Tax Commission, 419 Mich. 874 (1984). (App. A, infra, 1-A)

THE QUESTION INVOLVED IS SUBSTANTIAL

The Michigan Court of Appeals has upheld the constitutionality of the state property taxing scheme against Appellants' due process challenge. This decision is in error. The process of inter-county equalization, at issue in this case, has imposed a tax obligation upon Appellants without providing them with adequate notice or an opportunity to be heard in regard their tax obligation. The state inter-county equalization proceeding was also defective because the Appellants were denied representation at these proceedings, and the final equalization determination was rendered by a partial tribunal. The question presented in this action is substantial because it challenges the constitutionality of the Michigan property taxing scheme

and seeks to wrong a blatant denial of the Federal Constitutional right of due process to Macomb County taxpayers. This case involves substantial sums of money and affects large numbers of taxpayers in the State of Michigan.

An understanding of Michigan's inter-county equalization proceedings in 1975 is necessary for a full understanding of Appellant's position. On December 31, 1974, the local assessors of the municipalities within the County of Macomb determined the assessed valuation of each parcel of real property within each jurisdiction of the County. County taxpayers were given actual notice of their local taxing unit's assessment of the value of their particular property parcel. Macomb County taxpayers who took issue with the assessment were permitted to

protest their assessments at the municipality's board of review. If there was no dispute with that initial local assessment, a property taxpayer would have no cause to appear before the local board of review, as permitted by statute, to contest the valuation. From that point on, there was no notice afforded, nor required, as to the process or effect of intra-county or inter-county equalization determinations, despite the fact that the State Tax Commission's inter-county equalization determination increased Appellants' property tax obligation. Additionally, Appellants were not entitled to contest the inter-county equalization determination at the State Tax Commission. In fact, the State Tax Commission has argued that beyond the point of local assessment, the individual property

owner has no interest in the administrative proceedings directly affecting his tax liability sufficient to grant him standing to appear and contest at any subsequent point, even if the taxpayer was independently to have acquired knowledge of the subsequent proceedings. See 1971 AACS, R 209.9.

To further aggravate the deprivaation of due process in the Michigan property taxing scheme, the determination of inter-county equalization was rendered and contested by parties having an interest in the outcome which was directly adverse to the property owner's interest. At the level of the State Tax Commission's inter-county equalization determination which gave rise to these proceedings, the County, which in the State Tax

Commission's view is the only party with "interest" in the state equalization determinations, stood to gain by the State Tax Commission's increased equalization determination. By increasing the County's equalized valuation across the board, both the County and all local municipalities were in a position to accrue distinct financial benefit from accepting the State Tax Commission's alteration in land values. There was no identity of interest between that of the County in the inter-county equalization dispute and that of the individual taxpayers who stood to lose in contrast to the municipalities' gain.

Besides being inadequately represented, it must be noted that the final determination of equalized value was made by the very party which had

proposed the alteration. MCLA 209.1 et seq.; MSA 7.601 et seq. and MCLA 16.186; MSA 3.29(86). The State Tax Commission determined the appropriateness of its own proposed remedy. Subsequent to that determination, there was no guaranteed right to judicial review of the inter-county equalization determination of the State Tax Commission, even as to the County. On a showing by the County of fraud or error of law, an appellate court could reverse the determination of the State Tax Commission. However, the County's pecuniary interests were adverse to appellate review and reversal.

The Appellants strongly assert that these facts establish that their right to due process of the law has been violated in that they were given no notice or opportunity to be heard in

regard to the inter-county equalization proceedings, they were not adequately represented at these proceedings by county officials, and the proceedings were conducted by a biased tribunal. Each aspect of the due process violation will now be analyzed in detail.

(A) Appellants Were Denied Notice and Opportunity To Be Heard

Section 1 of the Fourteenth Amendment mandates that the State shall not deprive a person of his property without due process of law. This Court has determined that the due process protections apply to state taxing procedures. Turner v. Wade, 254 U.S. 64 (1920).

In describing the concept of "due process", this Court has acknowledged that the fundamental fairness which is

to be afforded by the due process right is at its basis "the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394 (1914). In order to be adequate, the hearing afforded must be at a "meaningful time and in a meaningful manner." Goldberg v. Kelly, 397 U.S. 254, 267 (1970). Additionally:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections . . . The notice must be of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance.

Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950). Even the governmental assertion of the need for administrative efficiency has been found to be subservient to the individual's right to procedural due process:

> The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution requires higher values than speed and efficiency. Indeed one might fairly say of the Bill of Rights in general, and the due process clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy governmental officials no less, and perhaps more, than mediocre ones.

Stanley v. Illinois, 405 U.S. 645, 656 (1972); United States Department of Agriculture v. Murry, 413 U.S. 508 (1973).

This Court has most recently applied its expanded notions of due process rights to mortgagees holding an interest in real property. In Mennonite Board of Missions v. Adams, ____ U.S. ____ 77 L Ed 2d 180 (1983) this Court determined that the Indiana law providing for the sale of real property on which taxes were delinquent denied a mortgagee its due process rights because it was not given adequate notice of the tax sale. In reaching this conclusion this Court noted its holding in Mullane, supra,:

> . . .that prior to an action which will affect an interest in life, liberty or property protected by

> the Due Process Clause of the Fourteenth Amendment, a State must provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Id. at 185. Such notice was not provided by publication, posting nor by mailing notice to the actual owner of the property. In rejecting the argument that the mortgage company was a sophisticated creditor, versed in property tax laws and able to discover a delinquency in the payment of property taxes, the Court noted:

> More importantly, a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation. . . Notice by mail or other means as certain to ensure actual notice is a

> minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable. Furthermore, a mortgagee's knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending.

Id. at 188. This case demonstrates the extent to which the Court has expanded the due process protections owed to an individual holding an interest in property.

The Appellants assert that these principles clearly establish that they have been denid their right to due process of law by the Michigan inter-county equalization proceeding. The Appellants were given no notice of

the inter-county equalization proceedings. They were not afforded an opportunity to appear at these proceedings to present their objections prior to the State Tax Commission's determination. At these proceedings the Appellant's property tax obligation was increased, based on the State Tax Commission's changing of the equalized valuation of Macomb County by approximately 14.6 percent for the 1975 tax year. By increasing their property tax obligation in this manner, Appellants have been deprived of their property without due process of law.

Despite the evolution of the due process concept, Appellants anticipate that the Appellees will contend that inter-county equalization is a quasi-legislative determination of policy affecting large numbers of

persons for which due process need only afford the barest of protections. In support of their contention, reliance would be undoubtedly placed on a United States Supreme Court decision rendered in 1915. Bi-Metallic Investment Co. v. Colorado, 239 U.S. 441 (1915). In that case, Colorado's inter-county equalization procedure was upheld as non-violative of due process of law even in the absence of notice and opportunity to be heard to individual property owners. The Court there stated:

> Where a rule of conduct applies to more than a few people it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or in assembly of the whole. General statutes within the state power are passed

> that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediately or remote, over those who make the rule. 239 U.S. at 442.

The Appellants urge this Honorable Court to reconsider the rule of law announced in Bi-Metallic Investment Co. in light of the expanded notions of due process which have been recognized by the Court and which culminated in Mennonite Board of Missions, supra. It is interesting to note that in 1908, just seven years prior to the issuance of the Bi-Metallic Investment Co. decision, this Court decided Longyear v. Toolan, 209 U.S. 414 (1908). In Longyear this Court upheld the constitutionality of Michigan's tax fore-

closure procedure. That procedure provided for publication of the petition for foreclosure and the accompanying order for hearing. In upholding the constitutionality of these proceedings the Court deemed publication notice adequate, especially in light of the fact that the owner of the property knew his taxes were unpaid. The owner was also charged with having knowledge of the statutory procedures. This same rationale was rejected by this Court in Mennonite Board of Missions, supra. The rationale of Bi-Metallic Investment Co. must similarly be rejected because it does not comport with current notions of procedural due process in that large numbers of taxpayers, whose names and addresses were known to the taxing authorities, Mullane, supra, have been

denied a meaningful opportunity to challenge the increase in their property tax obligation which was imposed through the process of inter-county equalization. The fact that a large number of taxpayers are involved should not effect the applicability of due process protections. To the contrary, it only compounds the wrong.

The fact that the state equalization process evidences traits of a legislative nature should not effect the applicability of due process protections because the procedure also evidences traits of adjudication. The Tax Commission's determination is based upon a factual and legal dispute between parties. One position ultimately prevails. As such, the Appellants assert that due process protections should be available.

The Michigan property taxation system has worked a substantial wrong on Appellants. These taxpayers had their tax obligations increased based upon an administrative proceeding to which they had no notice nor opportunity to be heard. In fact, one group of Appellants did not even own the property in Macomb County in 1975, yet they were required in 1977 and 1978 to pay taxes on their property which were attributable to tax year 1975. The wrong committed against these Appellants is even more egregious because when they purchased their property the County Treasurer certified the non-existence of unpaid tax liabilities for the previous five years. Instead of receiving notice as to a possible tax increase, these taxpayers were notified that the taxes on their property had been paid.

This fact clearly demonstrates that a substantial injustice has been committed by Appellees. While the Court of Appeals determined that "property is the subject of taxation and its owner a conduit for the exaction", the fact remains that the owner suffers a potential loss of his property through taxation. Cf Shaffer v. Heitner, 433 U.S. 186, 206, 212 (1977) (Dealing with in rem jurisdiction). Appellants, especially those who did not own property in Macomb County in 1975, were clearly denied property without due process of law and only this Court can grant them relief.

(B) Appellants Were Not Adequately Represented At The Equalization Proceedings

The Michigan Court of Appeals determined that "[i]n equalization

proceedings, the county represents the taxpayers of the entire county." Based upon this determination, the Court found no violation of due process in this case. The Appellants assert that a review of the instant record establishes that the interests of the County were adverse to those of the taxpayers and as such the taxpayers of Macomb County were not represented at the equalization proceedings.

This Court has found that, ". . . a selection of representatives for purposes of litigation, whose substantial interests are not necessarily or even probably the same as those whom they are deemed to represent, does not afford that protection to absent parties which due process requires." Hansberry v. Lee, 311 U.S. 32, 45 (1940). The Court analogized this

circumstance to situations in which a hearing officer has an interest in the outcome of litigation adverse to that of the litigants. Tumey v. Ohio, 273 U.S. 510 (1927).

At the level of the State Tax Commission's inter-county equalization determination, Macomb County stood to gain by the State Tax Commission's increased equalization determination in 1975. By increasing the County's equalized valuation across the board, both the County, and all local municipalities, were in a position to accrue distinct financial benefit from accepting the State Tax Commission's alteration in land values. There was no substantial identity of interest between that of Macomb County and the individual taxpayers who stood to lose

in contrast to the municipalities' gain.

The State Tax Commission argued below that 1975 PA 243 remedied this obvious lack of adversarial representation by depriving the County of any gain realized by inter-county equalization increases. MCLA 211.34; MSA 7.52. However, because 1975 PA 243 was first effective for the 1976 tax year, it merely serves to highlight the lack of adequate representation as to the taxes here in question which were generated in the 1975 tax year.

Since the County was in a position to accrue financial benefit from accepting the State Tax Commission's alteration in land values, the rationale expressed by the Court of Appeals in this action is incorrect. The County's financial interest in this

matter rendered it incapable of adequately representing the Appellants' interests in this case. It is erroneous to consider the County to be an adequate representative of the Appellants.

It must additionally be noted that even if Macomb County and its taxpayers enjoyed a substantial community of interests, the procedures utilized by the State Tax Commission prevented the County from being an effective representative. In supplementation of the statutory standards enacted by the legislature which pertained to inter-county equalization, the State Tax Commission promulgated its procedural guidelines delineating the state equalization process. 1971 AACS, R 209.43. Rule 43, which was in effect at the relevant times, illustrates the illusory nature of the procedural due

process protection afforded by the State Tax Commission in state equalization matters. Although each county was notified of the Commission's annual state equalization meeting, it was not apprised of any valuation alteration until "announced by the Commission at the hearing." If a county took exception to the proposed equalized value set by the State Tax Commission, it could only offer contrary evidence at the time it was apprised of the newly-determined assessed value. The county had no practical opportunity to prepare a contrary case prior to the time it was informed of the Commission's equalized valuation. In addition, after the Tax Commission has rendered its final state equalization determination, there is no guaranteed access of

the county to an independent reviewing body.

The State Supreme Court in Emmet County, supra, determined the State's Administrative Procedures Act (MCLA 24.201 et seq.; MSA 3.560(101) et seq.) to be inapplicable to inter-county equalization proceedings. 397 Mich. at 556. The procedural safeguards afforded by the APA do not serve to guarantee the application of procedural due process in this case. Therefore, any claim that the Appellants were adequately represented by Macomb County must be rejected.

(C) The Inter-County Equalization Proceeding Was Conducted By A Partial Tribunal

A final component of due process which was lacking in this case is that of a hearing before an impartial

tribunal. Due process is violated when a hearing officer has a pecuniary interest in a proceeding, Tumey v. Ohio, 273 U.S. 510 (1927) or when such an officer or tribunal has previously been involved in the case so that complete objectivity is lacking. Morrissey v. Brewer, 408 U.S. 471 (1971); See Gibson v. Berryhill, 411 U.S. 564 (1972). Due process mandates an objective tribunal, free from any preconceived notions about the merits of a dispute.

In this instance the same administrative body which propounded the equalization increase decided the correctness of that determination. MCLA 209.1 et seq.; MSA 7.601 et seq. and MCLA 16.186; MSA 3.29(86). In the absence of some guaranteed right to review that determination, the State

Tax Commission's discretion in inter-county equalization is untrammeled. The facts of this case amply illustrate the fact that the inter-county equalization determinations by the State Tax Commission have not been reviewed by any higher body. Although the County sought judicial review, its applications for appeal were dismissed both by the Court of Appeals and the Supreme Court. This procedure demonstrates another constitutional flaw in the Michigan taxing procedure.

The impartiality of the decision making process in the state equalization proceedings as it affected the Appellants is suspect. A single agency served as prosecutor, judge and jury in making inter-county equalization decisions. In addition, these taxpayers,

who were individually affected by state equalization determinations, did not receive notice regarding such determinations. These taxpayers were denied their individual opportunity to be heard in regard to the inter-county equalization proceedings.

The Appellants assert that they have established numerous constitutional deficiencies in the Michigan property taxing procedures. A susequent hearing cannot remedy these wrongs. Armstrong v. Manzo, 380 U.S. 545 (1965). A County seeking judicial review of an inter-county equalization decision must prove fraud or error of law. Emmet County v. State Tax Commission, 397 Mich. 550, 556 (1976). A taxpayer seeking review of his assessment following state equalization, Brittany Park v. Harrison Township, 104 Mich.

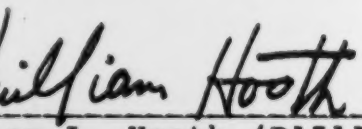
App. 81 (1981), will have a more difficult burden in establishing that his assessment exceeds fifty percent of true cash value if the assessment of all of the property in the County has been increased by the State Tax Commission. Since Appellants had no opportunity to be heard at the all-important equalization proceedings, a later hearing will not offer them the same opportunity for redress as would being able to participate in the Commission's proceeding. This Court should note probable jurisdiction so that it can hold the Michigan property taxing scheme unconstitutional as applied in this case.

CONCLUSION

Based upon the egregious wrong suffered by Appellants, this Court should note probable jurisdiction of this matter and given plenary consideration to this case.

Respectfully submitted,

COX AND HOOTH, P.C.
Attorneys for Appellants

By: 

William L. Hooth (P15113)
3001 West Big Beaver, #624
Troy, Michigan 48084
(313) 649-4455

Dated: August 6, 1984

APPENDIX A

AT A SESSION OF THE SUPREME COURT

OF THE STATE OF MICHIGAN,

Held at the Supreme Court Room,

in the City of Lansing,

on the 7th day of May

in the year of our Lord one thousand

nine hundred and eighty-four.

Present the Honorable
G. MENNEN WILLIAMS,
Chief Justice

THOMAS GILES KAVANAGH,
CHARLES L. LEVIN,
JAMES L. RYAN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
PATRICIA J. BOYLE,
Associate Justices.

72150

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and

APPENDIX A

ALYCE M. YOUNG, his wife; EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Plaintiffs-Appellants,

v

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,

Defendants-Appellees.

SC: 72150
COA: 66826
(126 MA 806 [On Rem])
LC: 78-1129-AA

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

STATE OF MICHIGAN -- ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is

a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing this 7th day of May in the year of our Lord one thousand nine hundred and eighty-four.

/s/ Corbin R. Davis, Clerk

APPENDIX B

STATE OF MICHIGAN

COURT OF APPEALS

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Plaintiffs-Appellants,

v

Docket # 66826

(ON REMAND)

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,

Defendants-Appellees.

APPENDIX B

Before: J.H. Gillis, P.J., and
Beasley and V.J. Brennan, JJ.

J.H. GILLIS, P.J.

This case is before the Court of Appeals on remand from the Supreme Court for reconsideration in light of Wikman v City of Novi, 413 Mich 617; 322 NW2d 103 (1982), and Romulus v Wayne County Drain Comm, 413 Mich 728; 322 NW2d 152 (1982). See Henshaw v State Tax Comm, 92 Mich App 585; 285 NW2d 382 (1979), vacated 414 Mich 902; 323 NW2d 910 (1982).

The undisputed underlying facts of this case were succinctly stated in Henshaw, 92 Mich App 586-587, as follows:

> "Plaintiffs each own property in either Shelby Township or the City of Sterling Heights in Macomb County. Following assessment by the local units of government and intra-county (county) equalization

by the County Board of Commissioners, the State Tax Commission, as part of the intercounty (state) equalization process, determined that the property in Macomb County was underassessed by 14.6 percent. The county attempted to appeal the decision of the State Tax Commission but was denied leave by both this Court and the Michigan Supreme Court. During the pendency of its applications for leave to appeal, the county directed the local units of government to issue their 1975 tax bills as a tentative levy based upon the county equalized value.

"When the county and local governmental units declined to collect the increased tax liability, the Chippewa Valley school district commenced a suit to force the county to levy 1975 taxes on the basis of the state equalized value. This suit was successful and as a result final 1975 tax bills were sent to property owners between December, 1977, and July, 1978.

"Plaintiffs in the instant suit, some of whom did not own property in Macomb County in 1975, filed suit in Macomb County Circuit Court seeking a refund of these taxes. Defendants brought motions for accelerated and summary judgment. The trial court ruled that it did not have jurisdiction over the

matter and granted defendants' motions. Plaintiffs now appeal as of right."

In Henshaw, this Court affirmed the circuit court's grant of summary and accelerated judgments, concluding that the Tax Tribunal possessed exclusive jurisdiction over plaintiffs' claims pursuant to MCL 205.731(b); MSA 7.650(31)(b). The Court noted that plaintiffs' constitutional issues could be raised before the Tribunal with an appeal by right to this Court. 92 Mich App 587-589.

The Supreme Court vacated this Court's opinion in Henshaw by an order entered August 30, 1982, remanding the case to this Court for reconsideration in light of Wikman and Romulus. The Supreme Court also ordered that the

parties be permitted to submit new briefs and make new arguments. The Supreme Court did not retain jurisdiction.

On rehearing, plaintiffs do not challenge the factual underpinnings of the 1975 intra-county equalization proceedings, their local assessment, the intracounty equalization factor applied to their property, nor the arithmetical effect of intercounty equalization. Plaintiffs present two questions to this Court:

I. Whether individual property owners are denied due process of law by the state's intercounty equalization procedures?

II. Whether the final levy of a 1975 property tax in 1978 violates the

constitutional requirement of uniformity of taxation?

Since both issues involve constitutional questions and the facts are undisputed, the parties agree that the circuit court is the proper forum in which to raise these issues. In light of the decisions in Wikman and Romulus, we agree; we conclude that the Legislature did not intend to divest the circuit court of jurisdiction to determine cases involving purely constitutional issues outside the Tribunal's sphere of expertise.

In lieu of remanding this case to circuit court, we will address these issues. GCR 1963, 820.1.

APPENDIX B

I

Whether individual property owners are denied due process of law by the state's intercounty equalization procedures?

Plaintiffs contend that the situation wherein they are forced to be represented at state equalization hearings by their elected county representatives denies them due process of law. They contend that in 1975, before the amendment of MCL 211.34; MSA 7.52, [1] the county could not adequately represent them because the county's interest was adverse to their own; that because the county would benefit from an increase in local assessments as a result of the state equalization proceeding,

plaintiffs' interests were not represented at those proceedings.

The Constitution mandates that the Legislature provide for a system of equalization of assessments. Const 1963, art 9, sec 3. MCL 209.1 et seq.; MSA 7.601 et seq. is the legislative implementation of the constitutional requirement for an equalization system. See Brittany Park Apartments v Harrison Twp, 104 Mich App 81, 86-87; 304 NW2d 488 (1981), where the Court describes the equalization process.

Each of this state's 83 counties has the opportunity to contest the State Tax Commission's determinations regarding intercounty equalization. See Emmet County v State Tax Comm, 397 Mich 550, 556; 244 NW2d 909 (1976). In

equalization proceedings, the county represents the taxpayers of the entire county. Thus, as defendants argue, the county represented plaintiffs' interests in the instant intercounty equalization proceedings.

In Brittany Park, individual taxpayers sought to contest the validity of their 1975 property taxes after intercounty equalization. In order to avoid due process and equal protection implications under both the federal and state constitutions, this Court interpreted MCL 205.735; MSA 7.650(35) and MCL 205.737; MSA 7.650(37) to give the taxpayers standing to petition the Tax Tribunal for a determination of the lawful property assessment of their property

after intercounty equalization for the 1975 tax year.

We hold that individual taxpayers are not denied due process of law in the state intercounty equalization proceedings. They are represented at every stage in those proceedings. Whether elected officials adequately represent their constituents is not a question for this or any court. We therefore decline to discuss whether the Macomb County officials adequately represented the plaintiffs in 1975.

II

Whether the final levy of a 1975 property tax in 1978 violates the constitutional requirement of uniformity in taxation?

APPENDIX B

A final levy of 1975 taxes in 1978 is not an increase in 1978 taxes. Rather, it is the 1975 final levy in accordance with intercounty equalization adjustments. See generally, OAG 1979-1980, No. 5767, p 953 (September 3, 1980). This final levy was designed to achieve the goal of uniformity of taxation, Const 1963, art 9, sec 3. See Ann Arbor Twp v State Tax Comm, 393 Mich 682, 687; 227 NW2d 784 (1975). Indeed, if the county had waived the collection of the additional levy for the tax year 1975, it would have violated the uniformity clause. Brittany Park, 95. Thus, the final levy of 1975 taxes in 1978 does not result in a violation of the uniformity clause.

Plaintiffs also argue that it is impermissible to levy a 1975 tax on property owners in 1978 who might not have been owners of property in Macomb County during 1975. Defendants contend that plaintiffs' assertion is frivolous, as it overlooks the fact that the "tentative" levy gave notice to buyers that a "final" levy was forthcoming and that property taxes are levied on property rather than ownership. Defendants are correct; property is the subject of taxation and its owner is a conduit for the exaction. See generally, Lucking v Ballantyne, 132 Mich 584, 586; 94 NW 8 (1903).

In view of the foregoing, the decision of the circuit court granting defendants' motions for summary and

accelerated judgment is reversed. Inasmuch as this Court has decided the constitutional issues, a remand to the circuit court is unnecessary.

/s/ John H. Gillis
/s/ William R. Beasley
/s/ Vincent J. Brennan

1/ MCL 211.34; MSA 7.52 requires a millage roll back for tax years 1976 and after where intercounty equalization increases the equalized value of the county.

APPENDIX C

AT A SESSION OF THE SUPREME COURT

OF THE STATE OF MICHIGAN,

Held at the Supreme Court Room,

in the City of Lansing,

on the 30th day of August

in the year of our Lord one thousand

nine hundred and eighty-two.

Present the Honorable
MARY S. COLEMAN
Chief Justice

THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.
Associate Justices.

CR 27-420

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and

APPENDIX C

ALYCE M. YOUNG, his wife; EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Plaintiffs-Appellants,

v

SC: 63893
COA: 78-4180
LC: 78-1129-AA

STATE TAX COMMISSION OF THE STATE OF MICHIGAN, THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,

Defendants-Appellees.

On order of the Court, plaintiffs-appellants' application for leave to appeal having been ordered held in abeyance pending decision in Romulus v Wayne County Drain Commissioner (Docket No. 62508) and Wikman v City of Novi (Docket No. 62843), and said decisions having been issued on July 2, 1982, 413 Mich 617,

Now, therefore, the application is hereby considered and the Court, pursuant to GCR 1963, 853.2(4), in lieu of granting leave to appeal, VACATES the judgment of the Court of Appeals and REMANDS the case to the Court of Appeals for reconsideration in light of Romulus v Wayne County Drain Commissioner, and

Wikman v City of Novi, 413 Mich 617. On remand, the Court of Appeals shall allow the parties to submit new briefs and make new arguments.

We do not retain jurisdiction.

0824

STATE OF MICHIGAN -- ss.

I, HAROLD HOAG, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing this 31st day of August in the year of our Lord one thousand nine hundred and eighty-two.

/s/ Corbin R. Davis, Clerk
Deputy

APPENDIX D

AT A SESSION OF THE SUPREME COURT

OF THE STATE OF MICHIGAN,

Held at the Supreme Court Room,

in the City of Lansing,

on the 25th day of February

in the year of our Lord one thousand

nine hundred and eighty.

Present the Honorable
MARY S. COLEMAN
Chief Justice

THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.
Associate Justices.

CR 27-420

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his

wife; EARL G. SMITH, JR.
and FLORENCE M. SMITH,
his wife,

Plaintiffs-Appellants,

v 63893

COA: 78-4180
LC: 78-1129-AA

STATE TAX COMMISSION OF
THE STATE OF MICHIGAN,
THE COUNTY OF MACOMB;
THE TOWNSHIP OF SHELBY
and THE CITY OF STERLING
HEIGHTS,

Defendants-Appellees.

On order of the Court, the application for leave to appeal is considered and, it appearing to this Court that the cases of Romulus v Wayne County Drain Commissioners (Docket No. 62508) and Wikman v City of Novi (Docket No. 62843) are presently pending on appeal before this Court and that the decision in those cases may be decisive of a issue raised in the present application for leave to appeal, it is ORDERED that the present application be held in abeyance pending decision in Romulus v Wayne County Drain Commissioners and Wikman v City of Novi.

0213

STATE OF MICHIGAN -- ss.

APPENDIX D

I, HAROLD HOAG, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing this 25th day of February in the year of our Lord one thousand nine hundred and eighty.

/s/ Corbin R. Davis, Clerk
Deputy

APPENDIX E

STATE OF MICHIGAN

COURT OF APPEALS

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Plaintiffs-Appellants,

SEP 20 1979

v

Docket # 78-4180

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,

Defendants-Appellees.

APPENDIX E

Before: J.H. Gillis, P.J., and
Beasley and R.M. Ransom, JJ.

PER CURIAM

Plaintiffs each own property in either Shelby Township or the City of Sterling Heights in Macomb County. Following assessment by the local units of government and intracounty (county) equalization by the County Board of Commissioners, the State Tax Commission, as part of the intercounty (state) equalization process, determined that the property in Macomb County was underassessed by 14.6 percent. The County attempted to appeal the decision of the State Tax Commission but was denied leave by both this Court and the Michigan Supreme Court. During the pendency of its application for leave

to appeal, the County directed the local units of government to issue their 1975 tax bills as a tentative levy based upon the county equalized value.

When the county and local governmental units declined to collect the increased tax liability, the Chippewa Valley School district commenced a suit to force the county to levy 1975 taxes on the basis of the state equalized value. This suit was successful and as a result final 1975 tax bills were sent to property owners between December, 1977, and July, 1978.

Plaintiffs in the instant suit, some of whom did not own property in Macomb County in 1975, filed suit in Macomb County Circuit Court seeking a

refund of these taxes. Defendants brought motions for accelerated and summary judgment. The trial court ruled that it did not have jurisdiction over the matter and granted defendants' motions. Plaintiffs now appeal as of right.

While the parties have raised a number of collateral issues, the sole issue which this Court must determine is whether the circuit court has jurisdiction where an individual property owner seeks to challenge a portion of his tax bill resulting from the inter-county equalization process. We affirm the trial court's determination that it does not.

Plaintiffs' initial pleading is entitled "Complaint for Refund of

Property Taxes", and the relief requested is essentially a "refund of all property taxes paid as a result of the complained of acts".

The jurisdiction of the State Tax Tribunal is provided by sec. 31 of the Tax Tribunal Act, which provides:

> "The tribunal's exclusive and original jurisdiction shall be:
>
> "(a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.
>
> "(b) A proceeding for refund or redetermination of a tax under the property tax laws." MCL 205.731; MSA 7.650(31).

Thus, subsection (b) of sec. 31 vests exclusive jurisdiction of the instant controversy in the Tax Tribunal.

APPENDIX E

Plaintiffs contend that because the matter involves state equalization the Supreme Court's decision in Emmet County v State Tax Commission, 397 Mich 550; 244 NW2d 909 (1976), precludes resort to the Tribunal as a forum. However, that case involved a county as a plaintiff seeking appellate review of State Tax Commission action in inter-county equalization. The Court held that where a county believes itself aggrieved by the determination of the State Tax Commission concerning inter-county equalization, the county may not seek administrative review in the Tax Tribunal but can seek judicial review, asserting fraud or error of law. 397 Mich at 556.

APPENDIX E

The instant case does not involve a county as plaintiff but rather individual property owners seeking to contest the legality of the tax bills they received. The Legislature intended such matters to be heard in the Tax Tribunal. While plaintiffs have raised certain constitutional issues in their complaint, such issues may nevertheless be raised before the Tribunal with appeal by right to this Court. Xerox Corp v Kalamazoo, 76 Mich App 150; 255 NW2d 797 (1977), MCL 205.753; MSA 7.650(53).

We specifically limit our decision to the issue of subject matter jurisdiction and do not address the issues raised by defendants on appeal or the merits of plaintiffs' allegations.

Affirmed. No costs, a public question being involved.

APPENDIX F

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF MACOMB

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Plaintiffs,

v File No. 78-1129AA

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,

Defendants.

APPENDIX F

OPINION OF COURT ON MOTIONS
FOR ACCELERATED JUDGMENT AND
MOTION FOR SUMMARY JUDGMENT

1. Plaintiffs are property owners of Shelby Township and of the City of Sterling Heights, Macomb County.

2. Plaintiffs complain in paragraphs 3, 4, 5, 6, and 7, that though they had their real estate taxes assessed properly, with proper notice and hearing before the local Board of Review, under MCLA 221.2, 221.29, 221.30(A): MSA 7.2, MSA 7.29 and 7.30(1), all in the regular way required by law, they have nevertheless been deprived of Constitutional equal protection and due process of law by lack of notice for and hearing on subsequent equalization resulting in a 14 plus percent equalization increase

in taxation as to which they were denied their Constitutional protection.

3. Plaintiffs claim that the Defendants illegally provided a "tentative" property tax levy against them for 1975 under MCLA 211.1 and MSA 7.1 et seq., and that they are therefore entitled to relief in this Court on the ground that they have no relief elsewhere against illegal taxation.

4. Under Count II, Plaintiffs claim to have had the statutory "five year no tax lien" certificates issued by the County on which they claim to have relied and that the Defendants are about to add a supplemental tax thereon amounting to the 14 percent additional and illegal tax, under MCLA 211.1 and MSA 7.1 et. seq.

5. On Motions here before the Court, the Defendant, County of Macomb, asserts that it has waived its right to the additional tax and therefore having previously contested the equalization properly by the statutory method has no responsibility for or interest in this litigation. The Defendant, State Tax Commission, contends that this Court has no jurisdiction over the matters described in Plaintiffs' Bill of Complaint and that on the contrary, the jurisdiction under the Complaint lies solely on the state tax administrative procedure and, or, the quasi judicial determination of the State Tax Tribunal under Constitutional tax law of the State.

6. The basic issue involved here is a contest as to the validity of the statutory procedure of the general property tax law and the Tax Tribunal Act of this State.

48 CLA 205.701, Act 186 of 1973.

7. The tax laws, read together, give all taxpayers right to a hearing upon their original assessment, and a right to apear and be heard, but without notice, only if they learn about and desire to do so in connection with the equalization procedure.

8. However, they were indirectly represented by their respective municipal officials at both of the equalization hearings under the law.

9. The equalization and due process clauses of the State and the

Federal Constitution afford reasonable protection in taxation matters but the law of Michigan and elsewhere permits the legislature to provide a fair method of apportionment of taxes, hearing thereon and does not require notice of equalization and a judicial type hearing and review in the absence of fraud, mistake or violation of the fair Constitutional requirements. So, in the absence of Constitutional restrictions legislatures may apportion taxes among taxable persons and municipalities of the State or of the County or divisions thereof, in such manner as in its discretion it sees fit.

84 CJS, page 686, section 354.

10. There is nothing in the State Constitution which requires city taxation to be in all respects equal or uniform in the absence of expressed provision therefore in the State Constitution.

84 CJS 75, section 21.

11. The Constitutional rights of Due Process and Equal Protection under the law have been and still are available to the Plaintiffs in the manner clearly described in the case of Kistner v Milliken, 432 Fed. Sup., page 1001. There in denying jurisdiction of a similar case, District Judge Joiner correctly stated that the Plaintiffs there, like the Plaintiffs here, have a right to hearing before the "State Tax Tribunal" and also by direct appeal to

the State Court of Appeals, under MCLA 205.753.

12. Plaintiffs do not allege fraud, mutual mistake, or other factors such as willful over or under assessment which might bring this matter for review before this Court.

13. In the absence thereof the Plaintiffs' Complaint is insufficient as against the County of Macomb, and does not assert jurisdictional facts affording this Court jurisdiction.

14. An order may be entered granting both Motions.

APR 21 1978

/s/ ARTHUR E. MOORE
Circuit Judge

cc: Gilbert C. Cox, Jr.
Attorney for Plaintiffs

Ray W. McPeters
Attorney for Defendant,
County of Macomb

Paul J. O'Reilly
Attorney for Defendant
City of Sterling Heights

Lawrence W. Morgan, Esq.
Assistant Attorney General

Roy W. Rogensues
Attorney for Defendant,
Township of Shelby

APPENDIX G

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF MACOMB

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Plaintiffs,

v File No. 78-1129AA

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,

Defendants.

APPENDIX G

ORDER GRANTING SUMMARY JUDGMENT
ON BEHALF OF THE COUNTY OF MACOMB

At a session of said Court held in the Circuit Courtrooms, Court Building, situated in the City of Mt. Clemens, County of Macomb, State of Michigan this 19th day of June, 1978.

Present: Honorable Arthur E. Moore
Circuit Judge

This cause came onto be heard on the Motion of Defendant County of Macomb for a Summary Judgment pursuant to GCR 1963, 117, and it appearing to the Court from the Pleadings, Briefs and Oral Arguments that the Plaintiffs complaint is insufficient as against the County of Macomb, and does not assert jurisdictional facts affording this Court jurisdiction, and therefore the defendant County of Macomb is

entitled to a judgment as a matter of law.

Now Therefore, it is ordered, adjudged and decreed that Summary Judgment be entered in favor of the defendant County of Macomb, and against the plaintiffs.

It Is Further Ordered that the opinion of this Court on the Motion for Accelerated Judgment as filed by the State of Michigan, and Motion for Summary Judgement as filed by the defendant County of Macomb, be and the same hereby is incorporated and by reference made a part hereof.

/s/ ARTHUR E. MOORE
Circuit Judge

APPENDIX H

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR
THE COUNTY OF MACOMB

HENSHAW, et al,

Plaintiffs,

vs. No. 78 1129 AA

STATE TAX COMMISSION,
et al.,

Defendants.
_____/

GILBERT C. COX, JR. (P12286)
Attorney for Plaintiffs

LAWRENCE W. MORGAN (P17961)
Attorney for State Tax Comm.

RAY W. MC PETERS (P17549)
Attorney for Macomb County

ROY W. ROGENSUES (P19563)
Attorney for Shelby Township

PAUL J. O'REILLY (P18517)
Attorney for Sterling Heights
_____/

APPENDIX H

ACCELERATED JUDGMENT

At a session of said
Court held in the Macomb
County Building in the
City of Mount Clemens,
Macomb County, Michigan,
on JUL 12 1979.

PRESENT: HONORABLE A.E. MOORE
CIRCUIT COURT JUDGE

An oral motion on behalf of Defendant City of Sterling Heights having been filed herein for accelerated judgment on the grounds that this Court lacks subject matter jurisdiction on the basis that the jurisdiction to hear this action is exclusively vested in the Michigan Tax Tribunal and the Plaintiff having indicated no procedural objection to the filing of said Motion and the Court otherwise being fully advised in the premises,

NOW, THEREFORE,

IT IS ORDERED AND ADJUDGED that an Accelerated Judgment be granted in favor of the City of Sterling Heights for the reasons set forth in the opinion of this Court on April 21, 1978.

/s/ ARTHUR E. MOORE
CIRCUIT JUDGE

Approved as to form &
Notice of entry waived:

/s/ GILBERT C. COX, JR. (P12286)
Attorney for Plaintiffs

/s/ LAWRENCE W. MORGAN (P17961)
Attorney for State Tax Comm.

/s/ RAY W. MC PETERS (P17549)
Attorney for Macomb County

/s/ ROY W. ROGENSUES (P19563)
Attorney for Shelby Township

/s/ PAUL J. O'REILLY (P18517)
Attorney for Sterling Heights

APPENDIX I

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR
THE COUNTY OF MACOMB

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife, et al,

Plaintiff,

v File No. 78-1129-AA

STATE TAX COMMISSION OF THE STATE OF MICHIGAN, THE COUNTY OF MACOMB, THE TOWNSHIP OF SHELBY, and THE CITY OF STERLING HEIGHTS,

Defendants.

_____/

Gilbert C. Cox, Jr (P-12286)
Attorney for Plaintiffs

Lawrence W. Morgan (P-17961)
Attorney for Defendant - STC

ORDER GRANTING
ACCELERATED JUDGMENT

At a session of said Court held in the County Building, in the City of Mt. Clemens, Macomb

County, Michigan, on the
19 day of June, 1978.

PRESENT: HONORABLE ARTHUR E.
MOORE, CIRCUIT JUDGE

This matter having come on for hearing upon Defendant State Tax Commission's Motion For Accelerated Judgment pursuant to GCR 116.1(2) and the Court having heard extended oral argument and received briefs, and having been advised in the premises, and having entered its written Opinion on April 21, 1978, which is made a part of and incorporated with this Order;

IT IS HEREBY ORDERED that the Complaint filed in this Macomb Circuit

Court be dismissed for lack of subject matter jurisdiction.

/s/ Arthur E. Moore
Circuit Judge

APPROVED AS TO FORM:

/s/ Gilbert C. Cox, Jr. (P-12286)
Attorney for Plaintiffs

/s/ Ray W. McPeters (P-17549)
Attorney for Macomb County

/s/ Roy W. Rogensues (P-19563)
Attorney for Shelby Township

/s/ Eugene F. Nowak (P-18354)
Attorney for Sterling Heights

APPENDIX J

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF MACOMB

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Plaintiffs,

v File No. 78-1129AA

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,

Defendants.

ROY W. ROGENSUES State Bar #P19563	JAMES M. HACKER State Bar #P23771

APPENDIX J

ACCELERATED JUDGMENT

At a session of said Court held in the Macomb County Court Building in the City of Mount Clemens, Macomb County, Michigan on September 29, 1978.

PRESENT: The HONORABLE ARTHUR E. MOORE, Circuit Judge.

Defendant, SHELBY TOWNSHIP, having heretofore endorsed a Motion for Accelerated Judgment in its Answer and Affirmative Defenses, and the Court having been fully advised in the matter, and the Court having further granted either Accelerated Judgment or Summary Judgment to all other parties Defendant, NOW THEREFORE,

IT IS ORDERED that Accelerated Judgment be and hereby is granted in favor of the TOWNSHIP OF SHELBY for the

reasons set forth in the Opinion of this Court dated April 21, 1978.

/s/ ARTHUR E. MOORE
Circuit Judge

APPROVED AS TO FORM AND
NOTICE OF ENTRY WAIVED

/s/ GILBERT C. COX, JR.
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/s/ PAUL J. O'REILLY
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/s/ JAMES M. HACKER
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APPENDIX K

STATE OF MICHIGAN

IN THE COURT OF APPEALS

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife, EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Plaintiffs-Appellants,

-v-

STATE TAX COMMISSION OF THE STATE OF MICHIGAN, THE COUNTY OF MACOMB, THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,

Defendants-Appellees.

Court of Appeals
No. 66826
(on Remand)

Macomb County
Circuit Court
No. 78-1129-AA

APPENDIX K

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Appellants do hereby appeal to the Supreme Court of the United States, pursuant to Title 28, United States Code, Section 1257(2), from the judgment of the Michigan Court of Appeals entered in this action on July 6, 1983.

Dated at Troy, Michigan, this 2nd day of August, 1984.

Respectfully submitted,

COX AND HOOTH, P.C.
Attorneys for Appellants

By: /s/ WILLIAM L. HOOTH

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Troy, Michigan 48084
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State Board of Equalization Act - MCLA 209.1-209.8; MSA 7.601-7.608:

AN ACT to create a state board of equalization; to prescribe its powers and duties; to provide that said board shall be furnished with certain information by the several boards of supervisors and by the state tax commission ; to provide for meeting the expenses authorized by this act, and to repeal all acts or parts of acts contravening the provisions of this act.

The People of the State of Michigan enact:

§7.601 State board of equalization; creation, membership, term, vacancies.

SEC. 1. There is hereby created a state board of equalization to consist of the state tax commission and 4 members appointed by the governor, by and with the advice and consent of the senate. Five members constitute a quorum for all official business: Provided, however, That not more than 2 members of the said quorum shall be members of the state tax commission. One of the appointed members shall be a person having knowledge of rural property values and experience in the administration of property tax assessments in this state. One of the members shall be a person having experience in the valuation of urban property valuations and in the administration of property tax assessments in this state. One of the members shall have

experience in the valuation of industrial and commercial property and in the administration of property tax assessments in this state. The other member shall be a person having knowledge of and experience in local government finance in this state. Within 60 days after the effective date of this 1962 amendatory act, the governor shall appoint the 4 members, 1 for a term of 4 years, 1 for a term of 3 years, 1 for a term of 2 years, and 1 for a term of 1 year. Their successors shall be appointed for terms of 4 years each. With the exception of the state tax commission, no appointed member of this board shall hold any other state office that has any power to appropriate or levy tax funds nor shall he have served as a member of the state tax commission for any period within 3 years prior to his appointment. Vacancies in the membership shall be filed in like manner for the unexpired term. The board shall exercise such powers and perform such duties as are herein prescribed.

§7.602 Same; annual meeting to equalize assessments.] SEC. 2. (1) The state board of equalization shall meet annually in the city of Lansing on the second Monday in May for the purpose of equalizing the assessments on all taxable property in this state, except that property assessed under laws enacted pursuant to sections 4 and 5 of article 10 of the state constitution of 1963.

Open Meetings Act, compliance. (2) The business which the state board of equalization may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date and place of the meeting shall be given in the manner required by Act. No. 267 of the Public Acts of 1976 .

§7.603 Same; organization; chairperson; secretary; record of proceedings, certification, filing. SEC. 3. (1) The board shall organize by choosing a member as chairperson . The secretary of the state tax commission shall act as secretary, and shall keep a record of all the proceedings of said board. The record, when certified by the chairperson and secretary, shall be filed in the office of the auditor general within 5 days after adjournment of said board .

Oath of office, filing; quorum. (2) The members constituting the board shall take and subscribe the constitutional oath of office. The oaths shall be filed and preserved with the proceedings of the board. Three members of the board shall constitute a quorum for the transaction of business.

Freedom of Information Act, compliance. (3) A writing prepared, owned, used, in the possession of, or retained by the state board of equalization in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

§7.604 Same; statement of valuations; hearing; equalization; certified transcript, publication, filing. SEC. 4. After the board [has] been organized, it shall proceed to examine the tabular statements and data furnished by the boards of supervisors and state tax commission. The board shall then cause to be prepared and printed a tabular statement showing, by counties, the total assessed valuation, the valuation as equalized by the board of supervisors for the current year, the valuation as equalized at the last preceding session of the state board of equalization and the valuation recommended by the state tax commission, and shall direct the secretary to forward a copy of such statement to the clerk of each county in the state forthwith. The board may continue in session until the fourth Monday in May for the purpose of considering the reports from the assessing officers, boards of supervisors and the state tax commission. It will meet in the city of Lansing on the fourth

Monday in May to hear the representatives of the several counties as hereinafter provided. The board shall determine whether the relative valuation between the several counties is equal and uniform, taking into consideration the location, soil, mineral wealth, improvements, productions and manufactories; and also whether the value of personal property in the several counties has been uniformly estimated and determined according to the best information which can be derived from the state or from any other source. If, after examination of the data and evidence furnished, the assessment of any county is determined to be at more or less than the true cash value of such county, the board shall equalize the same by adding to or deducting from the aggregate assessed valuation of the taxable real and personal property in such county such an amount as will produce a sum, which in the estimation of the board represents the proportion of true cash value established by the legislature. For the year 1971 and each year thereafter the board shall equalize real and personal property separately by adding to or deducting from the valuation of taxable real property in a county and by adding to or deducting from the valuation of taxable personal property in a county such amounts as will produce a sum which represents the proportion of true cash value established by the legislature . The valuation of the several

counties as equalized shall be certified by the chairman and secretary of the board and filed in the office of the auditor general and the state tax commission, and shall be the basis for apportionment of all state taxes until another equalization is made. The secretary of the state tax commission after the determination of the state board of equalization

* * * * * * *

has been filed in his office, forthwith shall send a certified transcript thereof to the treasurer of each county, who shall cause the same to be placed on file in his office available for public inspection.

§7.605 Board of supervisors, annual April meeting; equalization of assessments, completion date; aggregates of assessment rolls; statement to secretary of state tax commission; excepted property. SEC. 5. At the regular meeting of the boards of supervisors of the several counties held on the Tuesday following the second Monday in April each year said boards of supervisors shall when convened proceed to equalize the assessment rolls in the manner provided by law, which equalization shall be completed prior to the first Monday in May. Prior to such meeting each of said supervisors shall add up the columns of his assessment roll, enumerating the number of acres of land and the value of the real and personal

property assessed, so as to show the aggregate of each. The clerk of each board of supervisors shall prepare a tabular statement from the aggregates of the several rolls of the number of acres of land and the value of the real and personal property in each township and city as assessed, and also the aggregate valuation of the real and personal property appearing on each roll as equalized. Said clerk shall make a certified copy of said tabular statement, signed by the chairman and clerk of said board of supervisors, and shall transmit the same to the secretary of the state tax commission on or before the first Monday in May following, who shall lay the same before the state board of equalization immediately following its organization. The statement and copy thereof shall not embrace any property assessed under laws enacted pursuant to section 5 of article 9 of the state Constitution or on which specific taxes are imposed, or for which alternative means of taxation in lieu of general ad valorem taxation are provided by law .

§7.606 State tax commission; statement to board of equalization, contents. SEC. 6. It shall be the duty of the state tax commission to submit to the state board of equalization a statement showing the actual cash value of taxable real and personal property in each county in the state as ascertained and determined by its most recent examination of property values.

The commission shall furnish such other information relative to property conditions and values as the state board of equalization may require, and shall assist in every possible way to bring about fair, equal and uniform valuations between the several counties in the state. . . .

§7.607 State board of Equalization; county representation. SEC. 7. Any county may be represented before said board of equalization by such person or persons as shall be appointed for that purpose by the board of supervisors. The date and time of appearance of any such representative shall be fixed by the state board of equalization upon written request of each county desiring to be heard by its duly appointed representative.

§7.608 Same; compensation and expenses of appointed members, assistants and employees; payment; copies of proceedings. SEC. 8. Each appointed member of the board shall be entitled to $25.00 per day for each day of actual attendance at meetings of the board, and to his actual and necessary traveling and other expenses incurred in the performance of his official duties. The board may appoint such employees and assistants as shall be necessary for the proper exercise of the powers hereby granted. The compensation and expenses of the appointed members and assistants and employees shall be paid from appropriations made therefor by the legislature.

The board shall determine the number of bound copies of the proceedings of the board as it deems necessary for the use of the state, the costs of which shall be paid from appropriations made therefor by the legislature.

APPENDIX M

Executive Organization Act, Section 86; MCLA 16.186, MSA 3.29(86):

> SEC. 86. The state board of equalization created under section 1 of Act No. 44 of the Public Acts of 1911, as amended, being section 209.1 of the Compiled Laws of 1948, is transferred by a type III transfer to the state tax commission, and the state board of equalization is abolished.

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CLERK

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1984
No. 84-221 (2)

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR., and FLORENCE M. SMITH, his wife,
Appellants,

-v-

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,
Appellees.

WILLIAM L. HOOTH
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Attorney for Appellees

ON APPEAL FROM THE MICHIGAN
COURT OF APPEALS
MOTION TO DISMISS OR TO AFFIRM

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1984
No. 84-221

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife; DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife; ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife; RICHARD D. STAMM and CAROL A. STAMM, his wife; ROLF O. YOUNG and ALYCE M. YOUNG, his wife; EARL G. SMITH, JR., and FLORENCE M. SMITH, his wife,
Appellants,

-v-

STATE TAX COMMISSION OF THE STATE OF MICHIGAN; THE COUNTY OF MACOMB; THE TOWNSHIP OF SHELBY and THE CITY OF STERLING HEIGHTS,
Appellees.

ON APPEAL FROM THE MICHIGAN COURT OF APPEALS

MOTION TO DISMISS OR TO AFFIRM

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, appellees move that appellants' appeal from the opinion and judgment of the Michigan Court of Appeals (JS 1B-13B),[1] issued on July 6, 1983, and from an order of the Michigan Supreme Court denying leave to appeal, filed on May 7, 1984 (JS 1A-3A), be dismissed.

Or, in the alternative, the judgments of the State courts be affirmed for want of a substantial federal question and because the questions on which the decision of this cause depends are so unsubstantial as to need no further argument.

---

[1] Unless otherwise indicated, numbers in parentheses preceded by JS, will refer to pages of appellants' jurisdictional statement; numbers in parentheses preceded by JS but followed by letters of the alphabet will refer to pages in the appendices to appellants' jurisdictional statement.

OPINIONS BELOW

The opinions of the Michigan Court of Appeals, and references thereto, are set forth correctly by the appellants (JS 1B-13B; 1E-8E).

JURISDICTION

Appellants seek to invoke the jurisdiction of this Court under 28 USCA §1257 (2). For the reasons indicated herein, the appeal should be dismissed or the judgment should be affirmed.

QUESTION PRESENTED

No proper or substantial federal question is presented. The sole issue is:

> Does the right to due process of law guarantee to each individual owner of taxable property an opportunity for individual and direct participation in state equalization proceedings?
>
> > The statutory scheme which makes the counties of the state the representatives of the proprietary interests of all of their constituent taxpayers complies with the due process clause and the guarantee to due process does not contemplate or suggest the impossible requirement of direct participation by millions of taxpayers in the processes of state equalization.

STATUTES INVOLVED

The statutes involved, being Michigan's State Board of Equalization Act and Section 86 of the Executive Organization Act, are correctly set forth by appellants (JS 1L-9L; 1M).

STATEMENT OF THE CASE

Appellee accepts appellants' statement of the case. The factual background to the instant litigation is summarized in the syllabus of *Brittany Park Apartments* v *Harrison Township*, 104 Mich App 81, 304 NW 2d 488 (1981):

> ". . . In May 1975, the State Board of Equalization increased the state equalization factor for Macomb County from 1.0 to 1.28254. Macomb County proceeded to levy taxes based upon the tentative equalization factor of 1.0 while seeking review of the state equalization. The parties paid their 1975 taxes as spread on the basis of an equalization factor of 1.0. On October 8, 1976, the Tax Tribunal dismissed Macomb County's appeal and thereby affirmed the state equalization factor. The Macomb County Board of Commissioners, acting pursuant to MCL 211.39a; MSA 7.80(1), determined not to levy any additional taxes for 1975. A number of school districts within the county brought an action in Macomb Circuit Court seeking to compel the levy of the additional taxes for 1975. On May 17, 1978, the Macomb Circuit Court ordered Harrison Township, as statutory agent for the school districts located therein, to levy additional school taxes for 1975 in accordance with the state equalized value. In July, 1978, the township sent out an additional tax bill to all taxpayers. . . ."

ARGUMENT

MICHIGAN'S PROPERTY TAX SYSTEM

The annual exaction, known as Michigan's general property tax[2] is based upon an annual assessment by township and city assessors. There are in excess of 1500 such assessing districts.

The taxable status of property and its value are to be fixed as of December 31st of each year,[3] but the assessing officer is not restricted to any particular period in the preparation of his assessment roll. However, that roll must be completed prior to "the Tuesday next following the first Monday in March",[4] when it is submitted to a township or city board of review. Owners aggrieved by the assessment of their property may appear before the board of review and the board is authorized to change assessments of property upon petition by taxpayers or on its own motion. After completion of the review by the board, an endorsement is entered upon the assessment roll designating it as the assessment roll of said township (or city) for the year in which it has been prepared and approved by the board of review.[5]

The review of assessments in all cities and townships must be completed "on or before the first Monday in April."[6]

---

[2] 1893 PA 206, as amended, MCLA 211.1 et seq; MSA 7.1 et seq.

[3] 1893 PA 206 §2, as amended, MCLA 211.2; MSA 7.2.

[4] 1893 PA 206 §29, as amended, MCLA 211.29; MSA 7.29.

[5] 1893 PA 206 §30, as amended, MCLA 211.30; MSA 7.30.

[6] 1949 PA 285, MCLA 211.30a; MSA 7.30(1).

The board of commissioners of each county, at its April session in each year[7] examines the assessment rolls of the several townships and cities which comprise the county.

> ". . . If, on the examination, the county board of commissioners considers the assessments to be relatively unequal, it shall equalize the assessments by adding to or deducting from the valuation of the taxable property in a township or city an amount which in the judgment of the county board of commissioners will produce a sum which represents the true cash value of that property . . ."

The county board is assisted in its task by a department to survey assessments, commonly referred to as a County Equalization Department.

The equalization of the several townships and cities within the county by the board of county commissioners, commonly called "county equalization", may be appealed to the Michigan Tax Tribunal, which is the final authority in the administration of the property tax laws. The Tribunal may decide "that the determination and equalization made by the county board of commissioners is correct", in which case "further action shall not be taken." If the State Tax Tribunal, after investigation and hearing, determines that the valuations of the county were improperly equalized, ". . . it shall proceed to make deductions from, or additions to, the valuation of the respective townships, cities, or school districts as may be considered proper . . ."[8]

---

[7]
1893 PA 206 §34, as amended, MCLA 211.34; MSA 7.52.

[8]
1893 PA 206 §34, as amended, MCLA 211.34; MSA 7.52.

The determinations of the State Tax Tribunal concerning valuation or allocation are final "in the absence of fraud, error of law or the adoption of wrong principles . . ."[9]

County equalization is designed to maximize uniformity of assessments between assessing units of the county and its results are transmitted to the State Tax Commission on or before the first Monday in May.[10] The Commission which acts as a State Board of Equalization,[11] after hearings, establishes the "state equalized value" of every county

> ". . . by adding to or deducting from the applicable valuations in a county such amounts as well produce a sum which represents the proportion of true cash value established by the legislature . . ."[12]

---

[9]

Michigan Constitution of 1963, Art 6 §28.

[10]

1911 PA 44 §5, as amended, MCLA 209.5; MSA 7.605; (JS 6L).

[11]

Statutory references to the State Board of Equalization must be read to refer to the State Tax Commission. The Executive Organization Act of 1965, § 86, MCLA 16.186; MSA 3.29(86); (JS 1M) abolished the State Board of Equalization and reposed its functions and duties in the State Tax Commission.

[12]

1911 PA 44 §4, as amended, MCLA 209.4; MSA 7.604; (JS 5L). The statutory direction for fixing state equalized value at a legislatively established proportion of true cash value has reference to 1893 PA 206 §27a, MCLA 211.27a; MSA 7.27(1) which provides that ". . . property shall be assessed at 50% of its true cash value pursuant to Section 3 of Article 9 of the state constitution of 1963." Article 9, Section 3 authorizes the legislature to provide for the determination of true cash value of property and ". . . the proportion of true cash value at which such property shall be uniformly addressed, which shall not, after January 1, 1966, exceed 50 percent."

The foregoing processes of assessment, review and two-stage equalization at the county and state levels fix the final property tax base upon which authorized millages are levied. The state equalized value of any parcel of real property or item of taxable personal property is determined by spreading back a proportionate share of the adjustment, if any, made to the local assessed value by the processes of equalization.

Prior to the year 1827 there existed no property taxation in the territory of Michigan, except for taxes levied by cities and villages pursuant to specific charter powers. In 1827, a territorial law established township government[13] and in a companion measure, empowered it to levy ad valorem taxes upon real and personal property.[14] This latter Act contained a provision for intra-county equalization by the commissioners of each county.

The Revised Statutes of 1838, which streamlined and updated relevant territorial laws, adaptable to the newly created State of Michigan, continued the provisions for ad valorem taxation under Title V denominated "Of the assessment and collection of taxes."

County equalization had then, as it has now, as its basic purpose, the establishment of a county-wide uniform level of assessment. The goal of State equalization is the establish-

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[13]

An Act to divide the several counties in this territory into townships and for other purposes. Territorial Laws, Michigan, Volume II, pg 477 et seq, approved April 12, 1827.

[14]

An Act to provide for assessment of county and township taxes. Territorial Laws, Michigan, Volume II, pg 609 et seq, approved April 13, 1827.

ment of state-wide uniformity of assessment level.[15] That uniform level or standard was true cash value, a synonym for "usual selling price" or "market value" until January 1, 1964, the effective date of Michigan's 1963 Constitution. Since January 1, 1964,[16] that standard has been 50% of true cash value.

Townships and cities have remained as the primary assessing districts in the State of Michigan. The assessment rolls of more than 1500 assessing districts are equalized annually at their April session by 83 county boards of commissioners. The counties, as thusly equalized, are subjected to equalization *inter se* by the State Tax Commission during May of each year.

Michigan townships and cities employ assessors who must annually determine the true cash value of all taxable property within their respective township or city[17] and enter 50% of such value upon the assessment roll. Cities and townships also employ treasurers who multiply assessments by the au-

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[15]

If all county boards equalized cities and townships at the identical standard of cash value or some percentage thereof, state equalization would be redundant. Yet, throughout history, some county boards equalized these local units within their counties at cash value while other boards equalized at various fractions thereof. Such divergence, in the absence of intercounty equalization by a state board, would have resulted in a malapportionment of a state property tax which was levied until the 1930's as well as the taxes levied for intercounty taxing districts. To prevent such malapportionment, the delegates to the 1850 Constitutional Convention approved Art XIV §13, which mandated equalization of the counties by a state board.

The constitutional obligation was implemented by 1851 PA 106, which is the original progenitor of 1911 PA 44, as amended, (JS 1L-9L), the presently effective act providing for state equalization.

[16]

Michigan Constitution 1963, Art 9 §3 as implemented by 1965 PA 409.

[17]

1893 PA 206 §10, MCLA 211.10; MSA 7.10.

thorized millage rate, thereby producing the sum of tax which is billed to the owners of taxable property.[18] The tax may be paid within approximately two and one-half months after its billing, without addition of any interest or penalty.

Cities, townships, counties, school districts, community college districts, (junior colleges), airport, transportation or other charter authorities and metropolitan districts are authorized to levy property tax and to share in property tax proceeds. City and township assessors and treasurers are the agents of such tax-levying authorities in the assessment and collection of taxes.

APPELLANTS DO NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

There are more than three million descriptions of taxable property on the tax rolls of over 1500 assessing districts in Michigan. The appellants postulate that each owner of these three million descriptions of property must be personally notified of the state equalization proceedings and its results; and that each owner must be granted an opportunity to participate in these proceedings. Mere statement of the proposition refutes it. State equalization, a process which is constitutionally demanded, Mich Constitution 1963, Art 9 §3, in order to achieve equality of tax burden, would become impossible.

School districts, community college districts, airport and other tax-levying authorities often embody territory and property in several assessing districts and in two or more counties. To assure ad valorem property taxation in proportion to taxable wealth, it is necessary to equalize cities, townships and counties. In other words, uniformity of taxation is premised

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[18] 1893 PA 206 §44, MCLA 211.44; MSA 7.87.

upon existence of an identical standard and level of assessment throughout the State of Michigan. Without such equalization, property owners would be exposed to disproportionate tax burdens. Assessors and elected county commissioners could secure an advantage for their constituent taxpayers by assessing property at less than the statutorily mandated 50% of true cash value.[19]

If County A assesses at 50% and County B at 40% of true cash value, taxes paid to an intercounty school district, intercounty charter authority, metropolitan district, etc.—absent state equalization—would constitute different burdens upon identical property values in the two different counties. Taxpayers in County B would be preferred by 20%.

In *Cooper Township* v *State Tax Commission*, 393 Mich 58, 70; 222 NW 2d 900 (1974), the Michigan Supreme Court stated:

> "The Township, as the representative for equalization purposes of all the taxpayers within its boundaries, has a valid and recognizable interest in assuring that its residents are not taxed at an unfair rate. Likewise, the county board of commissioners, as representatives of the entire county, have a duty to equalize the assessments throughout the county so that all taxpayers pay a proportionately fair share of the cost of government."

The opinion herein of the Michigan Court of Appeals similarly notes (JS 8B, 9B):

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[19]

Such underassessment will reduce the amount of taxes levied by all local authorities, including city and township taxes. Thus, underassessment is only feasible in townships and cities with considerable wealth. Cities and townships which are in need of maximum tax proceeds cannot tolerate underassessment.

> "In equalization proceedings, the county represents the taxpayers of the entire county. Thus, . . . the county represented plaintiffs' interests in the instant intercounty equalization proceedings."

As acknowledged by the appellants (JS 8-10), the county of their residence, Macomb County, as representative of the appellants and other constituent taxpayers, vigorously contested state equalization before the Michigan Tax Tribunal and sought leave to appeal to the Michigan Court of Appeals and the Michigan Supreme Court. Finally, county officials declined to collect the additional 14.6% of property taxes resulting from state equalization until forced to do so by order of the Macomb County Circuit Court.

Under such circumstances, the appellants' argument that Macomb County failed to represent them adequately because of adverse interest, sounds hollow.

State equalization is necessary, as noted, to assure uniformity of taxation and equal treatment of taxpayers. All property taxes, whether levied by cities, townships, school districts, counties, etc., are computed upon state equalized values. Such values result from the process of equalization in which all ad valorem taxpayers are interested. However, because of their immense number, their direct participation in the equalization proceedings is an impossibility. By necessity, their interests must be guarded by representatives.

This Court has recognized that it is impossible to grant all taxpayers an opportunity to be heard in state equalization proceedings. In *Bi-Metallic Investment Co* v *State Board of Equalization*, 239 US 441, 445; 60 L Ed 372, 375 (1915), Mr. Justice Holmes stated:

> "The question, then, is whether all individuals have a constitutional right to be heard before a matter can be decided in which all are equally concerned,—here, for instance, before a superior board decides that the local taxing officers have adopted a system of undervaluation throughout a county, as notoriously often has been the case. The answer of this court in the State R. Tax Cases, 92 U.S. 575, 23 L Ed 663, at least, as to any further notice, was that it was hard to believe that the proposition was seriously made.
>
> "Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule . . . There must be a limit to individual argument in such matters if government is to go on . . ."

In the case at bar, the Michigan Court of Appeals stated (JS 10B):

> "We hold that individual taxpayers are not denied due process of law in the state intercounty equalization proceedings. Whether elected officials adequately represent their constituents is not a question for this or any court."

Yet, there is an additional and dispositive response to appellants' contention that they were denied the opportunity to contest imposition of state equalization adjustments. As noted by the Michigan Court of Appeals (JS 9B), individual tax-

payers were entitled to contest the state equalized value of their property before the Michigan Tax Tribunal. *Brittany Park Apartments* v *Harrison Township*, 104 Mich App 81; 304 NW 2d 488 (1981), dispositively held that Macomb County taxpayers had a right to be heard in the Tax Tribunal upon the question of whether their state equalized assessments exceeded the constitutional limit of 50% of true cash value.

Unlike the owners of Brittany Park Apartments, the appellants did not seek review of their individual assessments after the imposition of state equalization adjustments. Instead, the appellants, on their own behalf, and purportedly on behalf of all Macomb County taxpayers, sought a refund of additional taxes billed in July, 1978, and a declaratory ruling that the statutory state equalization procedures are constitutionally defective.

The appellants' contention that they had no opportunity to be heard in protest of the 14.6% increase of Macomb County's property tax base is consequently a half-truth. Admittedly, the appellants were not given the opportunity of a hearing before the State Board of Equalization. Their county of residence acted as their representative. However, pursuant to *Brittany Park Apartments, supra*, they had the right to a hearing before the Michigan Tax Tribunal upon the question whether imposition of the state equalization adjustments increased the assessment of their property beyond the constitutionally mandated 50% of true cash value. Such right to a hearing completely negates the proposition that state equalization procedures are an invalid encroachment upon the due process rights of property taxpayers.

THE "FINALITY RULE" DOES NOT CONTRAVENE THE CONSTITUTIONAL GUARANTEE OF DUE PROCESS OF LAW

Although not fashioned in precise language, the appellants suggest that the Constitution requires a guaranteed right for judicial review of state equalization results. (JS 46, 47)

Chicago, Burlington & Quincy Railway Co v *F C Babcock, et al,* 204 US 585; 51 L Ed 636; 27 S Ct 326 (1907), involved the valuation of an interstate railway company which was assessed by the Nebraska State Board of Equalization and Assessment. The opinion of Mr. Justice Holmes upheld the value judgment of the Nebraska Board. In the concluding paragraph of the opinion, after referring to the board, he stated:

> "Within its jurisdiction, except, as we have said, in the case of fraud or a clearly shown adoption of wrong principles, it is the ultimate guardian of certain rights. The state has confided those rights to its protection and has trusted to its honor and capacity as it confides the protection of other social relations to the courts of law. Somewhere there must be an end."

The Michigan Supreme Court adopted the proposition so clearly stated by Mr. Justice Holmes and consistently announced that it would refrain from reviewing the value judgment of the State Tax Commission, "in the absence of fraud, error of law or the adoption of wrong principles . . ." *Newport Mining Co* v *City of Ironwood,* 185 Mich 668; 152 NW 1088 (1915), *Sloman-Polk Co* v *Detroit,* 261 Mich 689; 247 NW 95 (1933), *S S Kresge Co* v *City of Detroit,* 276 Mich 565; 268 NW 740 (1936), *Hudson Motor Car Co* v *Detroit,* 282 Mich 69; 275 NW 770 (1937), *Twenty-Two Charlotte, Inc* v *Detroit,*

294 Mich 275; 293 NW 647 (1940), *Moran* v *Grosse Pointe Twp*, 317 Mich 248; 26 NW 2d 763 (1947), *Refining Co* v *Muskegon Twp*, 346 Mich 16; 77 NW 2d 255 (1956), *Kingsford Chemical Co* v *Kingsford*, 347 Mich 91; 78 NW 2d 587 (1956).

This case is governed by the "finality rule" which has been embodied into the Michigan Constitution of 1963 as the second paragraph of Art 6, §28, which states:

> "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation."

The cases of *Saginaw County* v *State Tax Commission*, 54 Mich App 160; 220 NW 2d 706 (1974), *aff'd* 397 Mich 550; 244 NW 2d 909 (1976) and *Emmet County* v *State Tax Commission*, 397 Mich 550; 244 NW 2d 909 (1976), indicate that the courts will respect the decisions of the State Board of Equalization. As stated by the Court of Appeals in *Saginaw County* v *State Tax Commission*, *supra* at 54 Mich App 170:

> ". . . our review is limited to questions of fraud, error of law or adoption of wrong principles. The annual task of ascertaining 'whether the relative valuation between the several counties is equal and uniform', like the intermediate steps of local assessment and county-wide equalization, necessarily involves resolution of conflicting factual claims. Where reasonable minds could differ as to the facts, we have neither the expertise nor the authority to intervene."

The limited scope of judicial review of state equalization proceedings, mandated by Michigan's constitutional finality

rule, does not result in a denial of due process. This proposition is especially true, because property taxpayers have a right to review by the Tax Tribunal of state equalization adjustments to the assessments of their property. *Brittany Park Apartments, supra.* If they can show that the Tribunal decision was tainted by fraud, error of law or the adoption of wrong principles, they have the right to judicial review in the Michigan Court of Appeals and upon leave granted, by the Michigan Supreme Court.

SUMMATION

The appellants have sought to invoke alleged due process rights in support of their quest for direct participation in state equalization proceedings. They have alleged that their county of residence, their representative in state equalization proceedings, did not adequately guard their interests and that because of adverse interest, the county's representation was insufficient to guarantee them the due process of law.

Assuming *arguendo* that elected county officials did chance exposure to the power of the ballot box by sham rather than vigorous representation of their constituent taxpayers, the appellants have suffered no irreparable harm. Individually, they had the right to review, after state equalization, the adjustments to their assessments resulting therefrom. *Brittany Park Apartments, supra.* Appellants did not choose to assert that right.

Instead, the appellants have sought to destroy an indispensable link in the administrative chain of property taxation. They have mounted a frontal assault upon state equalization, which is mandated by Art 9 §3 of the Michigan Constitution and which promotes and fulfills the guarantees of uniform

taxation and equal treatment of property taxpayers. They have argued that the due process guarantee of the federal constitution requires participation by millions of taxpayers in the equalization proceedings.

The availability to appellants of a hearing and decision by the Michigan Tax Tribunal upon the state equalization additions to their individual assessments safeguards the constitutional due process rights of the appellants. Due process of law does not require that state law provide multiple remedies. It only requires that aggrieved taxpayers be given one effective remedy. Michigan law provides such remedy. *Brittany Park Apartments, supra.* Its efficacy is not diminished by difficulties encountered in establishing that state equalization additions have increased an assessment beyond the constitutionally limited 50% of true cash value.

Since appellants were properly represented by county officials during state equalization proceedings, and since any lack of representation was remediable by contesting state equalization additions to individual assessments before the Michigan Tax Tribunal, the appellants cannot raise a federal question. Their argument is devoid of substance, and the judgments of the Michigan courts are conclusive.

RELIEF

WHEREFORE, it is respectfully submitted, for the reasons herein stated, that this Honorable Court should dismiss the appeal or affirm the judgment of the Michigan Court of Appeals.

Respectfully submitted,

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NO. 84-221

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

ROBERT E. HENSHAW and SHELEEN HENSHAW, his wife, DEAN R. SPIRO and VIRGINIA M. SPIRO, his wife, ROBERT C. CUCHERAN and NOLA CUCHERAN, his wife, RICHARD D. STAMM and CAROL A. STAMM, his wife, ROLF O. YOUNG and ALYCE M. YOUNG, his wife, and EARL G. SMITH, JR. and FLORENCE M. SMITH, his wife,

Appellants,

vs.

STATE TAX COMMISSION OF THE STATE OF MICHIGAN, THE COUNTY OF MACOMB, THE TOWNSHIP OF SHELBY, and THE CITY OF STERLING HEIGHTS,

Appellees.

ON APPEAL FROM THE MICHIGAN COURT OF APPEALS

MOTION TO DISMISS APPEAL AND

BRIEF IN SUPPORT OF MOTION

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MOTION TO DISMISS APPEAL

NOW COMES the Appellee, CITY OF STERLING HEIGHTS, by and through its attorneys, STEWART, O'REILLY, LASCOE & RANCILIO, P.C., and for its Motion To Dismiss Appeal pursuant to Supreme Court Rule 16.1(b) states the following:

1. The facts of this case have previously been stipulated to by all parties and are set forth in Appellants' Jurisdictional Statement.

2. For purposes of this Motion and Supporting Brief, Appellee CITY OF STERLING HEIGHTS accepts the facts as stated in Appellants' Jurisdictional Statement as correct.

3. The question presented in this case is whether Appellant taxpayers were denied due process of law pursuant to the Fourteenth Amendment of the Constitution when they were individually afforded no notice or opportunity to be heard in State property tax equalization proceedings, but

were represented by their elected public officials in those proceedings.

4. The question presented in this case has been explicitly answered by a decision of this Court so as to leave no room for real controversy.

5. Since the question presented has been explicitly answered by this Court, the present appeal is devoid of a substantial federal question.

WHEREFORE, the Appellee, CITY OF STERLING HEIGHTS, requests that this Honorable Court dismiss the appeal in the above-referenced cause of action pursuant to Supreme Court Rule 16.1(b) as the appeal does not present a substantial federal question.

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STATEMENT OF FACTS

For purposes of this Motion and Supporting Brief, Appellee, City of Sterling Heights, accepts the facts as stated in Appellants' Jurisdictional Statement as correct.

QUESTION PRESENTED

WHETHER APPELLANT TAXPAYERS WERE DENIED DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION WHERE THEY WERE NOT GIVEN INDIVIDUAL NOTICE OR OPPORTUNITY TO BE HEARD IN STATE PROPERTY TAX EQUALIZATION PROCEEDINGS, BUT WERE REPRESENTED BY THEIR ELECTED PUBLIC OFFICIALS IN THOSE PROCEEDINGS.

The Michigan Court of Appeals has answered this question "NO".

The Appellee City of Sterling Heights answers this question "NO".

The Appellants answer this question "YES".

I.

THE QUESTION INVOLVED IS NOT SUBSTANTIAL

The question presented in the instant case has been addressed and explicitly answered by a decision of this Court so as to leave no room for real controversy. The appeal of this cause therefore lacks a substantial federal question and should be dismissed. Equitable Life Assurance Society v. Brown, 187 US 308, 23 S Ct 123 (1902).

A. Because state equalization is a quasi-legislative process which affects a large number of persons, due process does not require that individual taxpayers be given notice and an opportunity to be heard.

This Honorable Court established long ago the principle that state equalization procedures do not violate due process of law simply because individual taxpayers are not afforded an opportunity to be heard

Bi-Metallic Investment Company v. State Board of Equalization, 239 US 441 (1915). One of the basic questions presented in the instant case is whether the rule of law announced in Bi-Metallic comports with current notions of due process. Appellants argue that recent developments have rendered the holding in Bi-Metallic obsolete. They, therefore, urge this Court to overrule that longstanding precedent. Appellee City of Sterling Heights strongly disagrees. Appellee argues that the holding in Bi-Metallic remains constitutionally sound, and that the present appeal should be dismissed under the principle of stare decisis.

Bi-Metallic involved a challenge of state equalization in Colorado after the valuation of taxable property was increased some forty (40%) percent. The complaint alleged that the equalization procedure

denied individual taxpayers due process of law because they were given no opportunity to be heard. In dismissing the complaint and affirming the decision below, the Court opined:

> "Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way they can be in a complex society, by their power, immediate or remote, over those who make the rule."

The Court then drew a distinction between Bi-Metallic and the case of Londoner v. Denver, 210 US 373 (1908). In Londoner, the Court held that where only a small number of persons would be affected by a special tax levy for paving a street,

those persons had a right to a hearing. The Court pointed out that whereas the decision in Londoner was made on individual grounds, Bi-Metallic involved a "general determination dealing only with the principle upon which all the assessments in a county had been laid." Bi-Metallic, 239 US at 375.

Londoner and Bi-Metallic, supra, were the forerunners of the present day distinction in the Michigan Administrative Procedures Act of 1969 [MCLA 24.201 - 24.315] between adjudicatory and leglislative fact finding. In a factually inapposite case, Justice Levin of the Michigan Supreme Court explained the distinction as follows:

> "Whether official action is legislative or administrative depends on the nature of the decision and the process by which it is reached as well as the governmental authority that makes the decision.

> "When action is based on general grounds, the decision is ordinarily legislative. When it is based on individual grounds, it is ordinarily administrative.
>
> "When legislative, the governmental authority can act without a hearing and judicial review is limited to an inquiry whether the action is irrational (and thus a denial of substantive due process) or violates some other constitutional limitation.
>
> "When based on individual grounds--when administrative--there must be a hearing and the inquiry on review, under the Michigan Constitution, is whether the decision is 'supported by competent, material and substantial evidence on the whole record.'"

Kropf v. Sterling Heights, 391 Mich 139, 215 NW2d 179 (1974), citing Bi-Metallic, supra. For a more detailed explanation, See 1 Davis, Administrative Law Treatise, Section 7.04.

Procedural due process protections of notice and an opportunity to be heard apply only to "contested cases" determining legal

rights, duties, or privileges of named parties. MCLA 24.203(3). Since there are no adversaries when the State Board of Equalization adjusts valuations on an intercounty basis, the provisions of the Administrative Procedures Act do not apply. Emmet County v. State Tax Commission, 397 Mich 550, 244 NW 2d 909 (1976). State equalization does not consider individual property valuations, but instead assures that valuations throughout the counties are uniform. Allied Supermarkets, Inc. v. Detroit, 391 Mich 460, 216 NW 2d 755 (1974). The determination regarding intercounty equalization is based on general grounds and applied to all taxpayers. Thus, the determination of the Michigan State Tax Commission is quasi-legislative in nature and requires no notice or hearing for individual taxpayers. Bi-Metallic, supra.

As for the recent developments which allegedly dictate the overruling of Bi-Metallic, it seems clear that the cases cited by the Appellants are not on point. The case of Mennonite Board of Missions v. Adams, ___US___, 103 S Ct ___, 77 L Ed 2d 180 (1983) is inapposite because it deals with state determinations based on individual rather than general grounds. The Court in Mennonite Board of Missions held that an Indiana tax sale statute denied a mortgagee due process of law by not giving it adequate notice of the sale of the mortgaged property. Appellee contends that Mennonite Board of Missions is consistent with the holding in Bi-Metallic. The determination to sell an individuals property for delinquent taxes is like the determination made in Londoner: in both instances, a relatively small number of individuals were exceptionally affected

upon individual grounds. Therefore, as was the case in Londoner, the local authority was required to notify the parties affected by the decision and allow them to be heard. This result is both consistent with and comtemplated by the decision in Bi-Metallic.

The case of Mullane v. Central Hanover Bank and Trust Co., 339 US 306, (1950) is also inapposite. The question presented in Mullane was whether the notice given to trust fund beneficiaries on a judicial settlement of accounts by the trustee was adequate, while the question presented in the instant case is whether individual taxpayers are entitled to any notice or opportunity to be heard in state equalization proceedings. Appellee contends that adequate notice was given to the county as the representative of all county taxpayers, but that under the authority of Bi-Metallic,

individual taxpayers need not be notified. In short, Mullane did nothing to change the distinction between legislative and administrative determinations and the due process requirements respecting each of those determinations.

This position is reinforced by the Court's more recent holding in United States v. Florida East Coast Railway Co., 410 US 224 (1973). In that case, the Court stated that later decisions have continued to observe the distinction adverted to in Bi-Metallic and Londoner. Justice Rhenquist asserted that, though the line dividing these two types of cases is not always easy to descern, these later decisions represent a recognized distinction in administrative law. Since the theory of due process set forth in Bi-Metallic continues to be acknowledged as constitutionally valid, the Appellants challenge

to intercounty equalization procedures in Michigan must fail.

B. All individual taxpayers are represented by their elected county officials throughout the state equalization process.

Individual taxpayers are represented throughout the intercounty equalization process by elected county officials. Each county is given the opportunity to be heard before the State Tax Commission regarding equalization. MCLA 209.7; MSA 7.604. Likewise, it is the county which may seek judicial review of equalization determinations in the case of fraud or error of law. Emmet, supra.

Appellants argue, however, that county representation for the tax year 1975 was inadequate since there was no substantial identity of interest between individual taxpayers and Macomb County. Appellants contend that the county stood to gain tax

revenue from the State Tax Commissions increase of land valuations, and therefore was incapable of adequately representing individual taxpayers, including the appellants.

The facts in the case at bar show rather conclusively that Appellants claim of inadequate representation is without substance. Macomb County filed applications for leave to appeal with the Michigan Court of Appeals (Docket No. 30760) and the Michigan Supreme Court (Docket No. 19325) asserting that the State Tax Commission's intercounty equalization for 1975 unlawfully increased the county's assessed valuation by 14.6 percent. Both of those applications were denied. The county and local units of government then decided not to collect the increased tax liability. The increased tax was finally levied in late 1977 and early 1978, but only after

Macomb County had been brought to court by the Chippewa Valley School District and an order was entered directing the county to levy the tax. Clearly, these facts prove that Macomb County was opposed to any valuation increase, and exhausted all available remedies in the interest of avoiding increased property taxes.

Any remaining doubt as to the identity of interest between a county and its taxpayers was removed by 1975 PA 243 [MCLA 211.34] which first took effect in the 1976 tax year. Under this Act, a county can no longer gain tax revenue by inter-county equalization since it must reduce millage rates commensurate with any tax increase due to a higher valuation. In light of this statutory modification, as well as the various actions taken by Macomb County on behalf of its taxpayers,

the Appellants should not be heard to complain of inadequate representation.

C. Individual taxpayers may challenge their assessments both before and after equalization occurs.

Even though the county is the proper party to challenge the determinations of the State Board of Equalization, the individual taxpayer is not precluded from raising his voice in dissent. If the property owner believes that his property is valued disproportionately to the valuation of the other properties in the assessment district, he may contest the valuation before the local board of review, MCLA 211.29, after receiving notice of any increase and the tentative SEV, MCLA 211.24c. The taxpayer is also afforded the opportunity to appeal to the State Tax Tribunal if the board renders an adverse decision, MCLA 205.735. These rights are fully explained when the taxpayer receives

notice of the board's disposition, MCLA 211.30(2).

For the 1975 tax year, an individual taxpayer could appeal directly to the Tax Tribunal if he believed his assessment to be more than 50% of the true cash value, MCLA 211.34a(2). Even after intercounty equalization occurs, an individual taxpayer can appear before the State Tax Tribunal to challenge the propriety of his assessment although he had not sought review of the original assessment. Brittany Park Apartments v. Harrison Township, 104 Mich App 81, 304 NW 2d 488 (1981). Given these opportunities for individual appeal of equalization determinations, and considering the fact that all taxpayers are represented by the county throughout the equalization process, the Court should find no violation of due process and dismiss the present appeal.

CONCLUSION

As the question presented in this case has been explicitly answered by a decision of this Court, the present appeal should be dismissed for lack of a substantial federal question pursuant to Supreme Court Rule 16.1(b).

Respectfully Submitted,

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